

ORDER NO. 742

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman;  
Dan G. Blair;  
Tony L. Hammond; and  
Nanci E. Langley

Market Test of Experimental Product—  
Collaborative Logistics

Docket No. MT2009-1

ORDER GRANTING IN PART  
TEMPORARY EXTENSION OF  
COLLABORATIVE LOGISTICS MARKET TEST

(Issued June 3, 2011)

I. INTRODUCTION

On April 26, 2011, the Postal Service moved to temporarily extend its Collaborative Logistics market test until its request to make Collaborative Logistics a permanent competitive product is approved. The Postal Service anticipates filing that request in September 2011.<sup>1</sup> As originally authorized, the two-year market test was to expire May 6, 2011.<sup>2</sup> On April 28, 2011, the Commission extended the market test to run until June 6, 2011 to allow development of a sufficient record upon which to

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<sup>1</sup> Motion of the United States Postal Service for Temporary Extension of Collaborative Logistics Market Test, April 26, 2011 (Motion).

<sup>2</sup> Order No. 211, Order Concerning Collaborative Logistics Market Test, May 7, 2009.

address the Motion on its merits under 39 U.S.C. 3641(d).<sup>3</sup> In Order No. 720, the Commission also appointed a Public Representative, provided an opportunity for public comment, and requested supplemental information from the Postal Service. *Id.* at 2.

For the reasons explained below, the Commission grants the Motion in part by extending the market test until September 30, 2011.

## II. POSTAL SERVICE PLEADINGS

In its Motion, the Postal Service indicates that it intends to request that Collaborative Logistics be made “a permanent offering on the competitive products list.” Motion at 1. The Postal Service cites “ongoing reorganization at Postal Service Headquarters” as the reason its request has been delayed. *Id.* Following completion of the reorganization, the Postal Service expects to be able to file its request in September 2011. *Id.* at 2.

In support of its Motion, the Postal Service contends that “[a]ny lag time between the conclusion of the market test and the establishment of Collaborative Logistics as a permanent product would create a significant hardship to the Postal Service and its business partners.” *Id.* It also asserts that the requested relief “would be appropriate under these circumstances, would be consistent with the intent of the statute, and would not prejudice any party.” *Id.*

In Order No. 720, the Commission requested the Postal Service “to explain more fully why it does not plan to file for permanent authority for 4 more months, and to provide a specific description of the justification for coordinating the test during that period.” Order No. 720 at 2. In response, the Postal Service provides additional details on its “significant Headquarters reorganization,” which includes “Reduction in Force (RIF) procedures to pursue reassignments of employees and repurposing of certain

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<sup>3</sup> Notice and Order Granting Temporary Extension of Collaborative Logistics Market Test, April 28, 2011, at 3 (Order No. 720).

functional groups.”<sup>4</sup> Among other things, responsibility for the Collaborative Logistics market test will be transferred from the Business Opportunity Development group to the Surface Transportation Operations group. Personnel in these groups (and others) will be affected by the RIF procedures. The Postal Service anticipates that reorganization will be completed by September 2011. *Id.* at 2-3.

The Postal Service asserts that under the circumstances, extending the market test by a few months and filing its request in September 2011 would ensure a more efficient use of resources of all interested stakeholders, including the Commission, interested parties, and the Postal Service. *Id.* at 3.

### III. COMMENTS

On May 16, 2011, the Public Representative filed the only comments on the Motion.<sup>5</sup> The Public Representative notes that pursuant to 39 U.S.C. 3641(d)(2), market tests, which are otherwise limited to 24 months in duration, may be extended for a period not to exceed 12 additional months “[i]f necessary in order to determine the feasibility or desirability of the product being tested.” *Id.* at 2-3. The Public Representative asserts that because the Postal Service has announced its intent to make Collaborative Logistics a permanent product offering, its request for an extension of the test period is not properly based on section 3641(d)(2). *Id.* at 3.

The Public Representative concludes that the threshold question raised by the Motion is whether the Commission can waive the Postal Service's failure to timely file its request for an extension “for reasons not expressly enumerated in section 3641(d)(2)”. *Id.* (Footnote omitted.) While the Public Representative does not express an opinion on that question, he does not oppose the extension assuming the Commission has authority to grant the waiver. *Id.* n.6.

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<sup>4</sup> Response of the United States Postal Service to Commission Order No. 720, May 5, 2011, at 1 (Postal Service Response).

<sup>5</sup> Comments of the Public Representative on Motion for Temporary Extension, May 16, 2011 (PR Comments).

#### IV. ANALYSIS

Under section 3641, the Postal Service may engage in market tests subject to certain conditions, e.g., revenue limitations and duration. The Collaborative Logistics market test was authorized to continue until May 6, 2011. See Motion at 1. The Postal Service seeks a limited extension of the market test, but not expressly for the reasons that would otherwise apply to an extension.<sup>6</sup> Implicitly, it appears that further testing is not necessary to determine Collaborative Logistics's feasibility or desirability.<sup>7</sup>

The Commission understands the circumstances that have precipitated the Postal Service's Motion. In response to its well-publicized financial difficulties, the Postal Service has taken aggressive cost cutting measures on a broad scale, including employing RIF procedures. These measures have had an unsettling effect on management oversight of the Collaborative Logistics market test. The Postal Service cites this reorganization as the primary reason for its failure to timely file for an extension of the market test. *Id.*

The Postal Service recognizes that its Motion "does not satisfy the precise terms of section 3641(d)(2)." *Id.* at 2. It contends, however, that a temporary extension of the market test, until its request to make Collaborative Logistics a permanent product is reviewed by the Commission is appropriate under the circumstances, consistent with the statute, and without prejudice to any party. *Id.*

Under the unique circumstances presented, the Commission finds it appropriate to grant the Motion. The 60-day notice period is procedural in nature. It is intended to

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<sup>6</sup> 39 U.S.C. 3641(d)(2) provides:

If necessary in order to determine the feasibility or desirability of a product being tested under this section, the Postal Regulatory Commission may, upon written application of the Postal Service (filed not later than 60 days before the date as of which the testing of such product would otherwise be scheduled to terminate under paragraph (1)), extend the testing of such product for not to exceed an additional 12 months.

<sup>7</sup> The Postal Service states that the market test is a "success" (Postal Service Response at 1) and has announced its intent to request that Collaborative Logistics be made a permanent competitive product offering. Motion at 1.

afford interested persons and the Commission adequate opportunity to consider a Postal Service application to extend a market test beyond 24 months. While the Postal Service's late filing in this instance precluded that opportunity, its failure to timely file for an extension has not compromised any potential party's substantive rights.

In Order No. 720, the Commission, *sua sponte*, authorized the market test to continue for one month and provided an opportunity for interested persons to comment on the Postal Service's Motion. Notably, no comments from users or competitors were received. The Public Representative raises concerns about the legal sufficiency of the Motion, but does not oppose allowing the market test to continue pending Commission review of the Postal Service's request to make Collaborative Logistics a permanent product offering.

To disrupt the market by construing the Motion as legally insufficient appears, under the circumstances, to be counterproductive and unnecessary. The Postal Service indicates that it will be able to file a request that Collaborative Logistics be made a permanent product by September 2011. *Id.* at 1. When that filing is made, the Commission will provide interested persons the opportunity to comment on the merits of that proposal. Thus, all potential commenters' substantive rights are preserved. Therefore, in the absence of any substantive objection to the limited extension of the market test, the Commission grants the Motion subject to the following condition: the Postal Service's request, pursuant to 39 U.S.C. 3642, to make Collaborative Logistics a permanent product must be filed no later than September 30, 2011. If such a request is timely filed, the Collaborative Logistics market test may continue pending issuance of a final Commission order in that proceeding. If such a request is not filed on or before September 30, 2011, the Collaborative Logistics test is not authorized to continue beyond that date.

*It is ordered:*

The Motion of the United States Postal Service for Temporary Extension of Collaborative Logistics Market Test, filed April 26, 2011, is granted as set forth in the body of this Order.

By the Commission.

Shoshana M. Grove  
Secretary